

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

In the Matter of	)	
	)	
GRAY TELEVISION LICENSEE, LLC	)	CSR- 8759-N
WTAP-TV (Fac. ID No. 4685)	)	Docket No. 13-16
WIYE-LD (Fac. ID No. 130392)	)	
WOVA-LD (Fac. ID No. 125125)	)	
Parkersburg, West Virginia	)	
	)	
Petition for Waiver of Sections 76.92(f) and	)	
76.106(a) of the Commission's Rules	)	

To: Office of the Secretary, Federal Communications Commission  
Attn: Chief, Media Bureau

**OPPOSITION**

**WEST VIRGINIA MEDIA HOLDINGS, LLC**

Ellen Mandell Edmundson  
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(202) 452-4825

Its Attorneys

Dated: February 11, 2013

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DECLARATION OF R. CHARLES DUSIC III

EXHIBIT A – TELEVISION BUREAU OF ADVERTISING, INC. “ADS, OTA AND WIRED-  
CABLE PENETRATION BY DMA”

ENGINEERING STATEMENT OF DONALD G. EVERIST, P.E.

## **SUMMARY**

West Virginia Media Holdings, LLC (“Media Holdings”), licensee of WOWK-TV, Huntington, West Virginia, opposes the “Petition For Special Relief” (“Petition”) filed by Grey Television Licensee, LLC (“Gray”), to the extent that Gray, licensee of low power television station WIYE-LD, Parkersburg, West Virginia, and WTAP-TV, Parkersburg, West Virginia (jointly “the Gray Stations”) seeks waiver of the “significantly viewed” (“SV”) exceptions to the network non-duplication rule (47 C.F.R. §76.92(f)) and the syndicated exclusivity rule (47 C.F.R. §76.106(a)) with respect to WOWK-TV.

Gray’s Petition should be dismissed. The Gray Stations are legally ineligible for non-duplication and syndicated exclusivity, WIYE-LD because it is a low power television station and therefore has no non-duplication and syndicated exclusivity rights under the Communications Act and the FCC’s rules, and the digital multiplex channel of WTAP-TV because the Gray-CBS affiliation agreement for Parkersburg (which names WIYE-LD as the “Affiliated Station”) does not expressly accord the multiplex channel any non-duplication rights and restricts the multiplex channel to only those rights derived from legally ineligible WIYE-LD. Further, because the relevant WOWK-TV service contour overlaps a large portion of Parkersburg, Section 76.106(a) bars Gray from claiming syndicated exclusivity against WOWK-TV in Parkersburg.

If Gray’s Petition is not dismissed it should be denied. The combined audience data submitted by Gray makes it impossible to determine whether, in any individual survey period, zero diaries were submitted, which would render the data statistically unreliable. Further, because WOWK-TV was the only full-power West Virginia CBS

affiliate viewable in Parkersburg during those survey periods, questions are raised as to whether the miniscule over-the-air data sample that Gray relies on properly represents Parkersburg viewing patterns.

Parkersburg television viewers have watched WOWK-TV for nearly half-a-century, and WOWK-TV has been the only West Virginia CBS affiliate viewable in Parkersburg for several decades. WOWK-TV wishes to continue to serve Parkersburg. For the reasons set forth in Media Holdings' Opposition, it is requested that Gray's Petition be dismissed or denied.

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Parkersburg, West Virginia	)	
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Petition for Waiver of Sections 76.92(f) and	)	
76.106(a) of the Commission's Rules	)	

To: Office of the Secretary, Federal Communications Commission  
Attn: Chief, Media Bureau

**OPPOSITION**

Pursuant to Section 76.7(b)(1) of the Commission's rules, 47 C.F.R. §76.7(b)(1), West Virginia Media Holdings, LLC ("Media Holdings"), licensee of WOWK-TV, Huntington, West Virginia (Fac. ID No. 23342), hereby opposes the December 27, 2012 "Petition For Special Relief" ("Petition") filed by Gray Television Licensee, LLC ("Gray"), to the extent that Gray, licensee of low power television station WIYE-LD, Parkersburg, West Virginia (Fac. ID No. 130392) and WTAP-TV, Parkersburg, West Virginia (Fac. ID No. 4685) (jointly "the Gray Stations") seeks waiver of the "significantly viewed" exceptions to the network non-duplication rule (47 C.F.R. §76.92(f)), and the syndicated exclusivity rule (47 C.F.R. § 76.106(a)), with respect to WOWK-TV. For the reasons set forth below, Gray's Petition must be dismissed or denied.

In support of this opposition, the following is hereby stated:

## **I. BACKGROUND**

For more than half a century, since 1955, television (“TV”) viewers in Parkersburg, West Virginia, have watched WOWK-TV, Huntington, West Virginia.<sup>1</sup> Parkersburg viewers turned to WOWK-TV for CBS Television Network (“CBS”) programs initially in the late 1950’s and early 1960’s, and have relied on WOWK-TV’s CBS TV programming continuously since the mid-1980’s when WOWK-TV resumed its CBS TV affiliation. Engineering Exhibits E-1 and E-2 to the attached Engineering Statement of WOWK-TV’s consulting engineer, Donald G. Everist, P.E., show that much of Parkersburg is within now-digital WOWK-TV’s noise-limited contour. As shown in Exhibit E-3 thereto, Wood County, West Virginia, where Parkersburg is located, abuts the Huntington-Charleston, WV DMA’s border.

For more than five decades, until late 2012, no CBS TV affiliate was licensed to Parkersburg, but Parkersburg viewers enjoyed the CBS programming received from the Huntington-Charleston stations. Since the mid-1980’s, WOWK-TV had been the only CBS TV affiliate licensed in West Virginia that could be viewed over-the-air in Parkersburg. To this day, WOWK-TV remains the only full-power West Virginia television station broadcasting CBS TV programming on its primary channel that is viewable in Parkersburg.

In 1972, the FCC developed its “significantly viewed list,” which lists television stations receiving a “significant” level of viewing in a county.<sup>2</sup> Since 1972, WOWK-TV has been continuously listed as “significantly viewed” in Wood County, where

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<sup>1</sup> The former call sign of WOWK-TV was WHTN. The station is hereinafter referred to as WOWK-TV.

<sup>2</sup> See *Memorandum Opinion and Order and Order on Reconsideration of Cable Television Report and Order*, FCC 72-530, 36 FCC 2d 326 (1972).

Parkersburg is located.<sup>3</sup> WOWK-TV remains listed as “significantly viewed” in Wood County in the FCC’s most recent iteration of the “significantly viewed” list, as modified on January 2, 2013.<sup>4</sup>

By its Petition, Gray seeks a waiver of the FCC rules (47 C.F.R. §76.92(f) and §76.106(a)) with respect to WOWK-TV’s “significantly viewed” status in Parkersburg. Gray claims that WOWK-TV’s “significantly viewed” status prevents Gray from asserting non-duplication and syndicated exclusivity rights to cable systems and other MVPD’s (jointly “cable systems”) with respect to WOWK-TV’s programming that is also broadcast by Gray’s stations.<sup>5</sup>

Gray is the licensee of WTAP-TV, Parkersburg, which is an NBC Television Network affiliate and broadcasts NBC Television Network programming on its primary channel. WIYE-LD, Parkersburg, a low power television station licensed to Gray, became a CBS affiliate a few months ago, effective September 1, 2012. In pertinent part, WIYE-LD’s CBS TV affiliation agreement (“the Gray-CBS affiliation agreement”) purports to accord WIYE-LD certain non-duplication rights. The Gray-CBS affiliation agreement also affords WTAP-TV certain opportunities for, but does not require, broadcast or simulcast of WIYE-LD’s CBS TV programming on a digital multiplexed channel of WTAP-TV.

## **II. GRAY’S WAIVER REQUEST MUST BE DISMISSED**

Gray’s request for a waiver of the FCC rule affording WOWK-TV “significantly viewed” (“SV”) protection from non-duplication and syndicated exclusivity claims

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<sup>3</sup> *Id.* at Appendix B.

<sup>4</sup> Official notice requested.

<sup>5</sup> *Petition For Special Relief* at pages 1-3.

should be dismissed out-of-hand. Gray states that the purpose of its SV waiver request is so that Gray may assert its alleged rights regarding duplicating network and syndicated programming on Parkersburg cable systems.<sup>6</sup> However, regardless of whether Gray obtains an SV waiver against WOWK-TV, Gray's Stations have no legal right, under the Communications Act ("the Act") or the Commission's rules, to seek non-duplication and syndicated exclusivity. As discussed below, Gray's CBS affiliate in Parkersburg is a "low power television station" (sometimes referred to as "LPTV").<sup>7</sup> Neither the Act nor the rules accord low power television stations non-duplication or syndicated exclusivity rights. Further, the rights of the WTAP-TV digital multiplexed channel under the Gray-CBS affiliation agreement are derived solely from legally ineligible WIYE-LD, and therefore there are no non-duplication or syndicated exclusivity rights to inure to the multiplex channel. Lastly, Gray's request for syndicated exclusivity against WOWK-TV in Parkersburg cannot be reconciled with the express language of Rule Section 76.106(a), which protects stations from syndicated exclusivity deletion in communities falling in whole or part within that station's contour, in view of the demonstrated contour overlap of WOWK-TV over a large portion of Parkersburg. *See* Exhibits E-1 and E-2 to Engineering Statement attached hereto.

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<sup>6</sup> *See e.g. Petition For Special Relief* at page 2 ("Gray respectfully requests that the FCC waive the significantly viewed exceptions ... so that Gray may enforce its network nonduplication and syndicated program exclusivity protection rights in ... Parkersburg") and 5 ("Gray, therefore, respectfully requests waivers of the significantly viewed exceptions so that it may enforce its network nonduplication and syndicated exclusivity rights in ... Parkersburg").

<sup>7</sup> Gray's CBS affiliate in Parkersburg, WIYE-LD, is licensed as a low power station, entitled to originate programming. Even if WIYE-LD were to function as a translator, rebroadcasting a primary station's programming, WIYE-LD would nevertheless be legally distinguishable from a translator, by virtue of its right to originate programming.



A. Low power television stations have no non-duplication rights or syndicated exclusivity rights under the Act or the FCC's rules.

It is well-established that low power television stations are not entitled to non-duplication protection or syndicated exclusivity rights. *See e.g. Storefront Television v. Last Mile Communications LLC*, 21 FCC Rcd 9929 at para. 3 (Deputy Chief, Policy Div., Media Bur., released Sept. 1, 2006) (“*Storefront Television*”).

As was observed in *Storefront Television*:

“... [T]he Act and the Commission’s rules do not provide low power television stations the authority to exercise network non-duplication rights.”<sup>8</sup>

*Storefront Television* went on to quote from *Amendment of Parts 73 and 76 of the Commission’s Rules Relating to Program Exclusivity in the Cable and Broadcast Industries*, 3 FCC Rcd 6171, 6177 (1998), in which the Commission stated:

“We also observe that none of [the network non-duplication or syndicated exclusivity] rules apply to low power television (LPTV) stations.”

The affiliate named in the Gray-CBS affiliation agreement is Gray’s low power television station WIYE-LD.<sup>9</sup> Regardless of whether the Gray-CBS TV affiliation agreement purports to contractually confer non-duplication rights on WIYE-LD, that private agreement cannot accord WIYE-LD greater rights than law allows.

Nor can Gray claim non-duplication or syndicated exclusivity rights for WTAP-TV’s digital multiplex channel. There is no express language in the Gray-CBS agreement conferring non-duplication or syndicated exclusivity rights on the multiplex

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<sup>8</sup> *Storefront Television* at para. 4.

<sup>9</sup> Gray filed the Gray-CBS affiliation agreement with the FCC on October 3, 2012, and that agreement is incorporated herein by this reference. The Affiliate Station under the agreement is identified in the second recital of page 1 of the agreement, as WIYE-LP (sic), Parkersburg, West Virginia (“Affiliated Station”). Official notice is requested.

channel. The only rights that the multiplex channel derives from the Gray-CBS affiliation agreement are the rights of low power television station WIYE-LD.<sup>10</sup> Because the law does not accord non-duplication or syndicated exclusivity rights on low power television stations, the multiplex channel cannot derive from low power television station WIYE-LD any greater rights than WIYE-LD itself can claim.

**B. Gray's syndicated exclusivity request is barred by the FCC's rules.**

Although Gray's Petition requests the FCC to waive the "significantly viewed" ("SV") exception to the syndicated exclusivity rule, §76.106(a),<sup>11</sup> a different prong of Section 76.106(a) protects WOWK-TV from syndicated exclusivity deletions regardless of SV status, by virtue of WOWK-TV's signal coverage over portions of Parkersburg. Specifically, the pertinent portion of Section 76.106(a) states:

(a) Notwithstanding the requirements of §§76.101 through 76.105, a broadcast signal is not required to be deleted from a cable community unit when that cable community unit falls, in whole or in part, within that signal's grade B contour ...

Engineering Statement Exhibits E-1 and E-2 attached hereto are maps depicting the extent to which the "noise-limited contours" of WOWK-TV overlap Parkersburg. Subsequent to the digital transition, the FCC has treated the "noise-limited contours" of digital television stations as the "functional equivalent" of the "Grade B contour" of analog stations. *Estes Broadcasting, Inc.*, 25 FCC Rcd 7956 at n. 2 (Media Bur., 2010) ("Post digital transition, the equivalent of the analog Grade B service contour is the noise-limited DTV service contour," citing *Report To Congress: The Satellite Home*

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<sup>10</sup> Section 2(a) of the Gray-CBS affiliation agreement states that Gray "... shall also have the option to broadcast or simulcast said Network Programs on WTAP-TV, Parkersburg, West Virginia, ... on all the same terms and conditions set forth in this Agreement, as a digital program stream on WTAP-TV;" Official notice is requested.

<sup>11</sup> *Petition For Special Relief*, page 2.

*Viewer Extension And Reauthorization Act of 2004: Study of Digital Television Field Strength Standards and Testing Procedures*, ET Docket No. 05-182, 20 FCC Rcd 19504, 19507, P3 (“For digital television stations, the counterpart to the Grade B signal intensity standards for analog television stations are the values set forth in Section 73.622(e) of the Commission’s Rules describing the DTV noise-limited service contour.”)). *See also ACME Television, Inc.*, 26 FCC Rcd 5189 at n. 18 (Chief, Video Div., Media Bur., 2011) (“Although the rule refers to Grade B contours, DTV stations do not have Grade B contours and the Commission treats noise-limited contours as their functional equivalent”). Accordingly, in the digital era, a broadcast signal is not required to be deleted from a cable community unit when that cable community unit falls, in whole or in part, within that signal’s noise-limited contour.

In view of the portions of Parkersburg overlapped by WOWK-TV’s noise-limited contour, Section 76.106(a) bars Gray from syndicated exclusivity with respect to WOWK-TV, independent from WOWK-TV’s SV protection. Therefore, even if, *assuming arguendo* Gray’s requested SV waiver were granted, Gray would remain barred from asserting syndicated exclusivity against WOWK-TV. For this additional reason, Gray’s Petition for an SV waiver with respect to WOWK-TV must be dismissed.

**III. IF GRAY’S SV WAIVER REQUEST IS NOT DISMISSED, IT MUST BE DENIED.**

In the unlikely event that Gray’s Petition is not summarily dismissed for the reasons set forth above, it must be denied. The audience survey data submitted by Gray is unreliable and contrary to market realities, and should be rejected. Further, under the narrow circumstances of the instant case, a grant of Gray’s requested waiver would be contrary to the public interest.

**A. Gray's audience survey data is unreliable and should be rejected.**

There are several reasons why the Commission should reject the audience survey data submitted by Gray in support of its Petition:

**(1) Combined data obscures whether at least one household responded each period.**

To challenge WOWK-TV's SV status, Gray relies on a special Nielsen re-tabulation of previously collected diaries from over-the-air households in the Parkersburg zip codes 26101 and 26104 from the years 2011 and 2012. Diaries from February 2011 were combined with diaries from May 2011, for a total of 10 diaries from the two combined periods in 2011. Diaries from February 2012 were combined with diaries from May 2012, for a total of 7 diaries from the two combined periods in 2012.

Although the data from each individual period was not presented in the Nielson data that Gray relies on, case law has established that a survey in which there are zero diaries for any one of the individual survey periods would be unacceptable for purposes of requesting a SV waiver. *See e.g. WTNH Broadcasting, Inc.*, 27 FCC Rcd 15895 at para. 9 (Senior Deputy Chief, Policy Div., Media Bur., 2012); *Saga Quad States Communications, LLC*, 7 FCC Rcd 14859 at para. 9 (Senior Deputy Chief, Policy Div., Media Bur., 2012) ("... [I]f there are no in-tab households for one of the survey periods, then the process of combining surveys is contrary to our intent because the individual survey adds nothing, and the claimed average is solely the result of one survey period.")

Combining viewing periods makes it impossible to determine whether the surveys for each individual period are statistically valid. Without data for each individual period, it is impossible to determine whether there was at least one respondent during each individual period.

In the instant case, the only data Gray provided is for combined periods, and the combined samples are very small. The total diaries in February 2011 plus the total diaries in February 2011 combined for a total of 10 diaries for 2011. The total diaries in February 2012 plus the total diaries in February 2012 combined for a total of 7 diaries for 2012. Neither Nielsen nor Gray represented that there was at least one diary for each individual period.

Under the circumstances, it is impossible to know whether there was a least one in-tab household for each of the viewing periods. In view of the small combined totals, it is possible that during any individual period there may have been zero diaries. Therefore, Gray has failed to demonstrate that its data is statistically reliable for purposes of determining whether WOWK-TV remains SV in Parkersburg, and Gray's data should be rejected.

(2) **Gray relies on over-the-air data that cannot be reconciled with market realities in Parkersburg.**

Parkersburg has a population of more than 31,000 persons.<sup>12</sup> As noted above, the total over-the-air diaries relied on by Nielsen for February 2011 plus May 2011 was 10, and the total over-the-air diaries relied on by Nielsen for February 2012 plus May 2012 was 7. Nielsen may have had difficulty locating over-the-air households in Parkersburg, where cable penetration is estimated at nearly 95% by the Television Bureau of Advertising, Inc. ("TVB"), a trade association comprised of television stations and advertisers, and has long exceeded the 90% mark.<sup>13</sup> The Commission can take official

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<sup>12</sup> 2010 U.S. Census.

<sup>13</sup> See Exhibit A hereto.

notice of the high cable penetration in Parkersburg, based on Annual Cable Operator Report Form 325 filings.

The fact that the over-the-air diaries reported no measurable viewing of WOWK- cannot be reconciled with overall viewing of WOWK-TV in Parkersburg. As noted above, during the survey periods WOWK-TV was the only full-power West Virginia CBS Network affiliate viewable over-the-air in Parkersburg. It is inconceivable that there was no viewership of the only full-power West Virginia CBS Network affiliate viewable in Parkersburg during the survey periods. Gray's data does not disclose what the over-the-air households reported watching.

The Commission has observed that, over time, the methodology for evaluating requests for SV waivers has "evolved," based in part on "market realities." *WTNH Broadcasting, Inc.*, 27 FCC Rcd 15895 at para. 4 (Senior Deputy Chief, Policy Div., Media Bur., 2012); *Saga Quad States Communications, LLC*, 7 FCC Rcd 14859 at para. 4 (Senior Deputy Chief, Policy Div., Media Bur., 2012). In the instant case, a determination of WOWK-TV's SV status based on a total of 10 over-the-air diaries combined from February 2011 and May 2011 and a total of 7 over-the-air diaries combined from February 2012 and May 2012 in a community with approximately 95% cable penetration would ignore the market realities of cable-dominated Parkersburg. Under these circumstances, the instant case clearly presents an opportunity to evolve the methodology of SV analysis by recognizing the market realities of cable penetration in the 21<sup>st</sup> century. The Bureau should reject Gray's data as an anachronism, particularly because WOWK-TV was the only West Virginia CBS affiliate available over-the-air in Parkersburg during the survey periods.

**B. Grant of Gray's requested waiver would be contrary to the public interest under the narrow circumstances of the case.**

Parkersburg television viewers have watched WOWK-TV's CBS Network programming and syndicated fare for decades, and WOWK-TV wishes to continue to serve Parkersburg. Although Gray's Petition claims to seek deletion of only WOWK-TV's duplicating programming, if Gray is granted a SV waiver against WOWK-TV many cable systems may, as a practical matter, delete the entire signal to free the channel for program streams available 24/7.

Deletion of WOWK-TV's programming would disrupt long-standing viewing patterns in Parkersburg. The public has a legitimate expectation that existing service will continue. *Modification of FM and TV Authorizations to Specify a New Community of License*, 5 FCC Rcd 7094 at para. 19 (1990). It would be contrary to the interest of the viewing public in Parkersburg to undercut its legitimate expectation of continued availability of WOWK-TV, particularly based on a miniscule over-the-air diary sample.

The loss of WOWK-TV's service to Parkersburg would be irreplaceable. WOWK-TV is part of a unique statewide network of West Virginia owned-and-operated stations that are programmed uniquely to service the interests of West Virginians throughout the state. WOWK-TV programming includes:

News:

6 ½ hours of regularly scheduled local news weekdays (5 half-hour local newscasts and 2 one-hour local newscasts) and 2 half-hour local newscasts on Saturdays and Sundays.

Public Affairs:

Locally-produced Sunday-morning one-hour public affairs program "Decision Makers" features interviews with leaders in West Virginia government, finance, public safety,

education, business, and other areas of West Virginia life, addressing matters uniquely of interest to West Virginians.

Sports:

Locally-produced weekend sports shows are hosted by West Virginia University men's football coach Dana Holgerson, and West Virginia University men's basketball coach Bob Huggins.

Emergency information:

Cut-ins when warranted by local emergencies and other developments immediately impacting the lives of West Virginians.

For this additional reason under the narrow circumstances of this case, Gray's Petition should be denied.

**IV. Conclusion**

Gray's Petition for a significantly viewed ("SV") waiver should be summarily dismissed. Gray says it seeks to enforce non-duplication and syndicated exclusivity rights against WOWK-TV in Parkersburg, but those rights are unavailable to Gray's Stations, by law. Gray's CBS Network affiliate in Parkersburg is a low power television station and low power television stations do not have non-duplication and syndicated exclusivity rights under the Act or the rules; and Gray's digital multiplex channel has no express non-duplication and syndicated exclusivity rights under the CBS affiliation agreement with Gray's low power television station, and in any event solely derive its rights under that agreement from the low power television station and cannot claim any greater rights under that agreement that the legally ineligible low power television station itself could claim. Furthermore, Section 76.106(a) bars exercise of syndicated exclusivity




against WOWK-TV in Parkersburg, in view of the overlap of WOWK-TV's noise-limited contour over a portion of Parkersburg.

If Gray's Petition is not dismissed it should be denied. The combined audience data submitted by Gray makes it impossible to determine whether, in any individual period, zero diaries were submitted, which would render the data statistically unreliable. Further, during those survey periods, WOWK-TV was the only full-power West Virginia CBS affiliate viewable in Parkersburg, raising questions as to whether the small over-the-air data sample Gray relies on properly represents Parkersburg viewing patterns.

WHEREFORE, the premises considered, the Bureau should dismiss or deny Gray's Petition.

Respectfully submitted,

**WEST VIRGINIA MEDIA HOLDINGS, LLC**

By   
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Its Attorney


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February 11, 2013

### DECLARATION

I, R. Charles Dusic, III, hereby declare, under penalty of perjury, as follows:

1. I am Chief Financial Officer of West Virginia Media Holdings, LLC, which is the licensee of digital television station WOWK-TV, Huntington, West Virginia.
2. I have read the foregoing Opposition, and to the best of my knowledge, information and belief formed after reasonable inquiry, it is well grounded in fact and is warranted by existing law or a good faith argument for modification of existing law, and it is not interposed for any improper purpose.

  
\_\_\_\_\_  
R. Charles Dusic, III

2/11/13  
Date

**EXHIBIT A**

TELEVISION BUREAU OF ADVERTISING, INC. “ADS,  
OTA AND WIRED-CABLE PENETRATION BY DMA”

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## ADS, OTA and Wired-Cable Penetration by DMA

\*OTA data reporting beginning Feb., 2012.

### DMA Household Universe Estimates: November - 2012

Sorting 

DMA Rank	DMA Name	% OTA	% Wired Cable	% ADS
164	Abilene-Sweetwater	11.2	35.1	54.4
150	Albany, GA	6.9	46.3	47.8
58	Albany-Schenectady-Troy	7.1	74.5	18.6
47	Albuquerque-Santa Fe	18.8	34.2	47.4
179	Alexandria, LA	7.5	51.2	42.4
208	Alpena	7.7	56.7	36.0
130	Amarillo	9.8	44.8	46.5
145	Anchorage	14.1	63.4	22.8
9	Atlanta	7.4	59.8	33.5
113	Augusta-Aiken	10.6	52.1	37.9
45	Austin	13.0	61.5	25.8
126	Bakersfield	14.9	48.0	37.8
27	Baltimore	8.4	70.7	21.3
155	Bangor	14.4	39.7	46.5
94	Baton Rouge	5.2	68.1	27.3
141	Beaumont-Port Arthur	6.6	48.8	45.5
192	Bend, OR	17.6	58.1	24.7
168	Billings	13.9	49.9	36.6
160	Biloxi-Gulfport	8.2	64.2	28.3
157	Binghamton	8.6	67.7	24.1
42	Birmingham (Ann and Tusc)	6.2	50.2	44.4
156	Bluefield-Beckley-Oak Hill	3.5	58.6	38.6
111	Boise	28.8	23.8	48.1
7	Boston (Manchester)	4.0	82.0	14.4
182	Bowling Green	9.4	67.4	23.8
52	Buffalo	7.8	63.3	29.4
97	Burlington-Plattsburgh	8.9	51.5	40.1
187	Butte-Bozeman	16.9	42.4	41.3
197	Casper-Riverton	10.2	58.9	31.4
90	Cedar Rapids-Wtrlo-IWC&Dub	13.2	52.2	35.1
83	Champaign&Sprngfld-Decatur	8.1	53.9	38.4
98	Charleston, SC	7.5	63.0	30.2
65	Charleston-Huntington	6.3	51.2	43.2
25	Charlotte	6.0	58.6	36.2
183	Charlottesville	12.8	51.9	36.2
87	Chattanooga	8.6	59.6	32.3
195	Cheyenne-Scottsbluff	8.4	57.8	34.4
3	Chicago	10.6	61.7	28.2

### RELATED ITEMS

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131	Chico-Redding	14.9	31.2	54.7
35	Cincinnati	14.0	56.6	29.5
170	Clarksburg-Weston	4.3	49.1	47.4
18	Cleveland-Akron (Canton)	9.3	66.1	25.1
89	Colorado Springs-Pueblo	13.6	41.1	45.8
77	Columbia, SC	10.5	51.9	38.2
138	Columbia-Jefferson City	14.0	31.6	54.9
127	Columbus, GA (Opelika, AL)	8.4	58.2	34.1
32	Columbus, OH	12.0	65.1	23.1
133	Columbus-Tupelo-W Pnt-Hstn	10.5	31.5	58.6
129	Corpus Christi	8.3	52.9	39.4
5	Dallas-Ft. Worth	17.1	51.6	32.0
99	Davenport-R.Island-Moline	11.5	49.0	40.0
63	Dayton	15.1	59.7	25.4
17	Denver	12.9	46.2	41.1
72	Des Moines-Ames	16.0	40.9	43.5
11	Detroit	8.1	70.0	22.4
169	Dothan	8.4	52.4	39.9
139	Duluth-Superior	19.2	38.8	42.6
91	El Paso (Las Cruces)	19.4	44.4	37.1
174	Elmira (Corning)	6.1	64.4	30.4
146	Erie	11.7	56.9	32.0
121	Eugene	13.4	50.6	36.6
194	Eureka	16.6	55.7	28.2
104	Evansville	10.0	48.6	41.8
202	Fairbanks	27.8	45.2	27.1
117	Fargo-Valley City	8.4	58.4	33.7
67	Flint-Saginaw-Bay City	10.0	58.5	31.9
55	Fresno-Visalia	17.0	35.7	48.6
62	Ft. Myers-Naples	6.5	61.4	32.7
101	Ft. Smith-Fay-Sprngdl-Rgrs	11.1	51.9	37.7
109	Ft. Wayne	20.6	40.9	39.0
163	Gainesville	10.9	51.6	37.8
210	Glendive	6.7	65.9	28.4
185	Grand Junction-Montrose	17.9	51.5	30.8
39	Grand Rapids-Kalamzoo-B.Crk	12.7	56.3	31.4
190	Great Falls	12.3	39.3	49.2
69	Green Bay-Appleton	17.3	51.7	31.5
46	Greensboro-H.Point-W.Salem	9.3	56.0	35.2
100	Greenville-N.Bern-Washngtn	10.0	52.5	38.1
37	Greenvll-Spart-Ashevl-And	8.9	44.0	47.6
188	Greenwood-Greenville	6.0	55.9	39.1
86	Harlingen-Wslco-Brnsvl-McA	24.4	43.4	33.6
43	Harrisburg-Lncstr-Leb-York	7.2	66.3	26.9
178	Harrisonburg	8.1	52.9	39.8
30	Hartford & New Haven	3.7	81.5	15.2
167	Hattiesburg-Laurel	8.6	45.6	46.9
206	Helena	16.3	51.9	32.0
71	Honolulu	5.4	85.7	9.1
10	Houston	17.5	53.4	29.4
79	Huntsville-Decatur (Flor)	6.9	50.5	43.2
162	Idaho Falls-Pocatillo(Jcksn)	21.3	31.9	47.4
26	Indianapolis	11.2	59.2	29.7
93	Jackson, MS	7.4	42.5	51.0
176	Jackson, TN	8.8	54.9	36.8
50	Jacksonville	8.2	56.1	36.4
102	Johnstown-Altoona-St Colge	4.3	55.4	40.9

181	Jonesboro	7.3	57.7	35.6
149	Joplin-Pittsburg	18.4	34.6	47.6
207	Juneau	9.8	70.7	20.1
31	Kansas City	13.7	59.0	27.5
61	Knoxville	6.9	57.9	35.7
128	La Crosse-Eau Claire	12.0	53.1	35.3
189	Lafayette, IN	9.2	61.7	29.6
124	Lafayette, LA	7.0	56.8	36.8
175	Lake Charles	8.5	62.4	30.2
115	Lansing	12.9	52.4	35.1
184	Laredo	16.5	57.4	27.3
40	Las Vegas	9.0	57.1	34.6
64	Lexington	9.7	46.5	44.4
199	Lima	7.7	66.2	26.8
105	Lincoln & Hastings-Krny	10.1	48.5	41.9
56	Little Rock-Pine Bluff	8.7	40.8	51.1
2	Los Angeles	12.9	51.5	36.4
48	Louisville	10.4	62.6	27.4
142	Lubbock	14.3	48.4	38.3
120	Macon	6.6	45.7	48.8
85	Madison	17.1	48.0	35.3
198	Mankato	11.1	62.8	26.6
180	Marquette	6.0	59.5	34.8
140	Medford-Klamath Falls	12.2	37.4	51.0
49	Memphis	12.3	48.9	39.0
186	Meridian	11.2	33.8	56.0
16	Miami-Ft. Lauderdale	6.6	70.6	24.1
34	Milwaukee	21.8	58.8	19.7
15	Minneapolis-St. Paul	18.2	52.8	29.2
151	Minot-Bismarck-Dickinson(Wlstn)	9.6	60.6	30.6
166	Missoula	16.3	35.5	48.6
60	Mobile-Pensacola (Ft Walt)	8.3	52.0	40.3
137	Monroe-El Dorado	7.3	43.8	49.8
125	Monterey-Salinas	10.2	51.9	38.5
118	Montgomery-Selma	6.3	60.2	34.2
103	Myrtle Beach-Florence	9.0	61.8	30.0
29	Nashville	5.6	55.1	39.6
51	New Orleans	7.3	56.6	37.3
1	New York	3.9	85.3	11.6
44	Norfolk-Portsmouth-Newport News	6.1	69.3	25.2
209	North Platte	10.1	54.4	36.4
152	Odessa-Midland	5.5	60.8	34.4
41	Oklahoma City	15.7	54.2	30.2
75	Omaha	10.9	64.2	25.6
19	Orlando-Daytona Beach-Melbourne	6.2	68.2	26.3
200	Ottumwa-Kirkville	10.7	47.1	42.8
81	Paducah-Cape Girardeau-Harrisburg	10.2	31.4	58.9
148	Palm Springs	3.3	69.9	27.9
159	Panama City	8.9	59.0	32.8
193	Parkersburg	5.6	69.2	26.1
116	Peoria-Bloomington	11.1	52.3	37.1
4	Philadelphia	5.6	80.0	15.6
13	Phoenix (Prescott)	16.4	40.5	43.3
23	Pittsburgh	5.3	71.6	23.2
22	Portland, OR	11.7	55.5	32.8
80	Portland-Auburn	9.6	63.6	27.1
205	Presque Isle	9.2	50.2	41.4

53	Providence-New Bedford	6.3	86.0	8.0
171	Quincy-Hannibal-Keokuk	13.3	37.7	49.6
24	Raleigh-Durham (Fayetteville)	10.9	55.5	33.6
173	Rapid City	10.9	58.3	31.5
108	Reno	9.6	48.2	42.6
57	Richmond-Petersburg	8.7	59.4	32.9
68	Roanoke-Lynchburg	9.9	37.9	52.8
78	Rochester, NY	11.8	67.4	21.2
153	Rochester-Mason City-Austin	12.3	56.7	31.7
135	Rockford	10.1	55.4	35.2
20	Sacramento-Stokton-Modesto	10.5	47.7	42.2
144	Salisbury	6.3	71.3	23.2
33	Salt Lake City	15.9	41.2	43.0
196	San Angelo	5.2	55.3	40.7
36	San Antonio	13.2	57.3	29.6
28	San Diego	7.4	75.2	18.0
6	San Francisco-Oak-San Jose	8.0	64.2	28.4
122	Santa Barbara-San Marcos-Santa Luis Obispo	8.3	52.2	40.2
92	Savannah	5.4	55.2	40.6
12	Seattle-Tacoma	5.2	73.9	21.2
161	Sherman-Ada	11.2	35.1	54.3
82	Shreveport	8.0	33.2	59.8
147	Sioux City	11.4	52.1	36.9
112	Sioux Falls (Mitchell)	9.2	63.4	27.6
95	South Bend-Elkhart	17.9	40.4	42.1
73	Spokane	14.9	36.7	48.9
74	Springfield, MO	16.6	29.4	54.8
114	Springfield-Holyoke	5.9	78.6	16.2
201	St. Joseph	13.4	49.5	37.7
21	St. Louis	9.5	51.3	39.5
84	Syracuse	9.2	73.3	17.9
106	Tallahassee-Thomasville	7.5	49.5	43.7
14	Tampa-St. Pete (Sarasota)	7.9	76.9	15.8
154	Terre Haute	11.8	39.9	49.1
76	Toledo	10.9	62.6	27.0
136	Topeka	11.8	54.1	34.4
119	Traverse City-Cadillac	10.6	47.9	42.1
96	Tri-Cities, TN-VA	6.4	55.4	38.8
70	Tucson (Sierra Vista)	13.7	45.5	41.8
59	Tulsa	16.9	43.9	39.1
191	Twin Falls	17.8	34.2	48.9
107	Tyler-Longview (Lufkin & Nacogdoches)	8.9	40.6	51.5
172	Utica	6.5	72.7	21.6
204	Victoria	8.6	60.1	32.2
88	Waco-Temple-Bryan	9.6	50.3	40.8
8	Washington, DC (Hagerstown)	3.4	75.1	22.1
177	Watertown	7.6	67.2	25.6
134	Wausau-Rhineland	17.3	42.7	40.7
38	West Palm Beach-Ft. Pierce	4.2	74.0	23.5
158	Wheeling-Steubenville	7.0	62.9	31.2
143	Wichita Falls & Lawton	8.6	40.0	52.2
66	Wichita-Hutchinson Plus	12.0	56.9	31.7
54	Wilkes Barre-Scranton-Hazleton	4.9	60.6	35.3
132	Wilmington	8.5	64.0	28.1
122	Yakima-Pasco-Richland-Kennewick	16.6	36.7	47.2
110	Youngstown	10.5	61.5	28.2
165	Yuma-El Centro	17.0	35.3	48.6

203	Zanesville	4.7	67.4	28.2
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ADS Archives:

Source: Nielsen Media Research, Inc.  
Nielsen Station Index (NSI)

\*Estimates used throughout the 2012-2013 television season, effective September 22, 2012

Alternate Delivery Systems (ADS) refers to reception of TV programming via satellite (DBS or Large Dish), or from satellite master antenna systems (SMATV), or from multipoint distribution systems (MDS).

\* TV Households with wired cable as well as ADS are included in both the Wired Cable and ADS columns. This causes the sum of Wired Cable and ADS to be a larger number than the number in the Cable and/or ADS column.

Effective February 2007, Nielsen modified the computations used to obtain Media-Related UEs. Telephone status (presence of a phone or no phone) will no longer be a weighting criterion. Wired Cable and ADS UEs for all metered markets and diary-only markets are affected as a result of this modification.

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## Parkersburg

The far right column ("% ADS" under the Subscription TV heading) can be used as a cable discount estimate -- i.e., it is possible that whatever the local cable system or interconnect is claiming for ratings or homes delivered in this DMA can be discounted by this percentage.

Date	TV Households*		% ADS
	% Cable and/or ADS	% Wired Cable	
November - 2011	93.2	70.4	22.8
July - 2011	93.6	71.5	23.1
May - 2011	93.4	71.8	22.5
February - 2011	94.4	72.0	23.4
November - 2010	93.9	71.2	23.8
July - 2010	94.1	71.9	22.7
May - 2010	94.2	72.1	22.7
February - 2010	94.0	72.6	21.9
November - 2009	93.9	74.1	20.4
July - 2009	94.2	75.6	19.1
May - 2009	93.5	72.8	21.3
February - 2009	92.8	71.7	21.9
November - 2008	92.9	70.9	22.5
July - 2008	92.7	70.9	22.4
May - 2008	93.1	71.8	21.9
February - 2008	93.0	72.5	21.1
November - 2007	92.9	72.6	20.9
July - 2007	93.2	73.8	20.1
May - 2007	93.3	75.0	19.0
February - 2007	93.2	75.7	18.2
November - 2006	93.8	76.3	18.7
July - 2006	93.5	75.0	19.8
May - 2006	94.2	74.9	20.6
February - 2006	94.0	75.5	19.6
November - 2005	95.2	76.3	19.9
July - 2005	95.1	76.3	20.1
May - 2005	93.9	75.3	19.9
February - 2005	94.1	75.4	19.8
November - 2004	93.6	76.1	18.8
July - 2004	93.0	76.4	18.1
May - 2004	94.4	78.0	17.9
February - 2004	94.3	78.1	18.0
November - 2003	93.9	78.0	17.7
July - 2003	93.9	79.4	16.4
May - 2003	93.3	78.0	16.9
February - 2003	94.0	79.1	16.8
November - 2002	94.8	80.1	16.4
July - 2002	95.1	79.6	16.9

May - 2002	94.9	80.0	16.7
February - 2002	93.8	78.5	16.9
November - 2001	92.9	77.4	17.0
July - 2001	93.5	76.3	18.2
May - 2001	90.2	76.9	14.8
February - 2001	88.8	76.6	13.4
November - 2000	91.3	76.7	16.2
July - 2000	91.2	75.6	17.5
May - 2000	92.6	76.4	18.0
February - 2000	89.0	75.8	13.2

Source: Nielsen Media Research, DMA Household Universe Estimates

Alternate Delivery Systems (ADS) refers to reception of TV programming via satellite (DBS or Large Dish), or from satellite master antenna systems (SMATV), or from multipoint distribution systems (MDS).

\* TV Households with wired cable as well as ADS are included in both the Wired Cable and ADS columns. This causes the sum of Wired Cable and ADS to be a larger number than the number in the Cable and/or ADS column.

The January 1, 2007 DMA TV Household Universe Estimates are based on estimates provided by Claritas, Inc. For several markets, the universe estimates reflect the demographic impacts of the 2005 Gulf Coast hurricanes. Claritas produced the hurricane-adjusted estimates using alternative sources and methods because traditional demographic sources are not up to date or do not yet reflect the post-hurricane population changes. These sources included information from local demographers, the Red Cross, and FEMA. Nielsen will continue to evaluate post-hurricane population data sources and may make adjustments if data becomes available that would improve the quality and accuracy of the estimates.

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ENGINEERING STATEMENT OF DONALD G. EVERIST, P.E.

ENGINEERING STATEMENT  
IN SUPPORT OF  
WEST VIRGINIA MEDIA HOLDINGS, LLC  
OPPOSITION TO A PETITION FOR SPECIAL RELIEF  
BY GRAY TELEVISION, INC.  
PARKERSBURG, WEST VIRGINIA  
FEBRUARY 2013

COHEN, DIPPELL AND EVERIST, P.C.  
CONSULTING ENGINEERS  
RADIO AND TELEVISION  
WASHINGTON, D.C.

COHEN, DIPPELL AND EVERIST, P. C.

City of Washington           )  
  ) ss  
District of Columbia        )

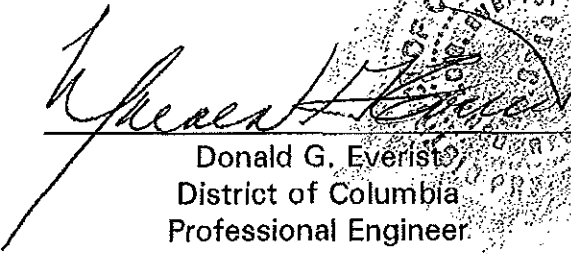
Donald G. Everist, being duly sworn upon his oath, deposes and states that:

He is a graduate electrical engineer, a Registered Professional Engineer in the District of Columbia, and is President, Secretary and Treasurer of Cohen, Dippell and Everist, P.C., Consulting Engineers, Radio - Television, with offices at 1420 N Street, N.W., Suite One, Washington, D.C. 20005;

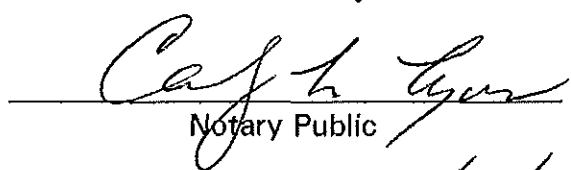
That his qualifications are a matter of record in the Federal Communications Commission;

That the attached engineering report was prepared by him or under his supervision and direction and

That the facts stated herein are true of his own knowledge, except such facts as are stated to be on information and belief, and as to such facts he believes them to be true.

  
Donald G. Everist  
District of Columbia  
Professional Engineer  
Registration No. 5714

Subscribed and sworn to before me this 11<sup>th</sup> day of February, 2013.

  
Notary Public

My Commission Expires: 2/28/2013



This engineering statement is prepared to support the opposition of West Virginia Media Holdings, LLC, licensee of digital television station WOWK-TV, Huntington, West Virginia, to a "Petition for Special Relief," filed with the FCC on December 27, 2012 by Gray Television, Inc. Gray Television, Inc. is the licensee of low-power television station WIYE-LP, Parkersburg, West Virginia, and WTAP-TV, Parkersburg, West Virginia (CSR-8759-N).

Gray Television, Inc. requests waiver of the "significantly viewed" exception to Section 76.92(f) (network non-duplication) and Section 76.106(a) (syndicated exclusivity) with respect to WOWK-TV in the community of Parkersburg, West Virginia (Docket No. 13-16). WOWK-TV is shown in the FCC's 1972 "significantly viewed" list as significantly viewed in Wood County, West Virginia, where Parkersburg is located.

- Exhibits E-1 depicts the overlap of the noise-limited contour of digital television station WOWK-TV over the municipal boundary of Parkersburg, West Virginia.
- The depiction of the municipal boundaries of Parkersburg, West Virginia is based on U.S. Bureau of Census for 2000<sup>1</sup>.
- The noise-limited contour of WOWK-TV, as depicted in Exhibit E-1, was originally filed with the FCC in the engineering report entitled, "Engineering Statement, Modification of Construction Permit on Behalf of West Virginia Media Holdings LLC, WOWK-DT, Huntington, West Virginia, Channel 13, 12.5 kW ERP, 414 Meters HAAT, June 2008" (FCC File No. BMPCDT-20080620AJA).

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<sup>1</sup>This is the latest city limits currently available.

- Exhibit E-2 is a detail of the extent to which WOWK-TV's noise limited contour overlaps a portion of Parkersburg, West Virginia
- Exhibit E-3 depicts the Designated Market Area ("DMA") for Charleston-Huntington in relation to the Parkersburg DMA based on 2005 data.
- The FCC deems the noise-limited contour of a digital television station to be the functional equivalent of the Grade B contour of an analog station.

Under Section 76.106(a) of the FCC Rules, Gray is prohibited from asserting syndicated exclusivity against WOWK-TV in Parkersburg, West Virginia. The pertinent portion of Section 76.106(a) states:

"Notwithstanding the requirements of Sections 76.101 through 76.105, a broadcast signal is not required to be deleted from a cable community unit when that cable community unit falls, in whole or in part, within that signal's Grade B contour."

#### Coverage

The average elevation data for 3.2 to 16.1 km along each radial are based upon the 3-second NGDC terrain data.

The F(50,90) DTV coverage contour has been computed from reference to the propagation data for Channels 7-13, as published by the FCC in Figure 10 and Figure 10a, Section 73.699 of the FCC Rules and Regulations.

Utilizing the formula in Section 73.625(b)(2) of the Rules for the effective heights, it is found that the depression angle,  $A_h$ , varies from 0.54 to 0.58 degrees. Since the relative vertical field is greater than 90% of the maximum at these depression angles, the maximum power was used in



determining the distance to the DTV contour. The listed parameters for WOWK-TV have been abstracted from the Federal Communications Commission's Consolidated Data Base System ("CDBS").

Table I includes the distances to the 36 dBu F(50,90) coverage contour, the average elevation 3.2 to 16.1 km, and the antenna height above average terrain for the eight radials. The above method is based on Section 73.625 of the FCC Rules and has been utilized for the following exhibits.

- Exhibit E-1 provides the 36 dBu F(50,90) coverage contour.
- Exhibit E-2 depicts the calculated 36 dBu contour in relation to Parkersburg, West Virginia.

Cohen, Dippell and Everist, P.C.

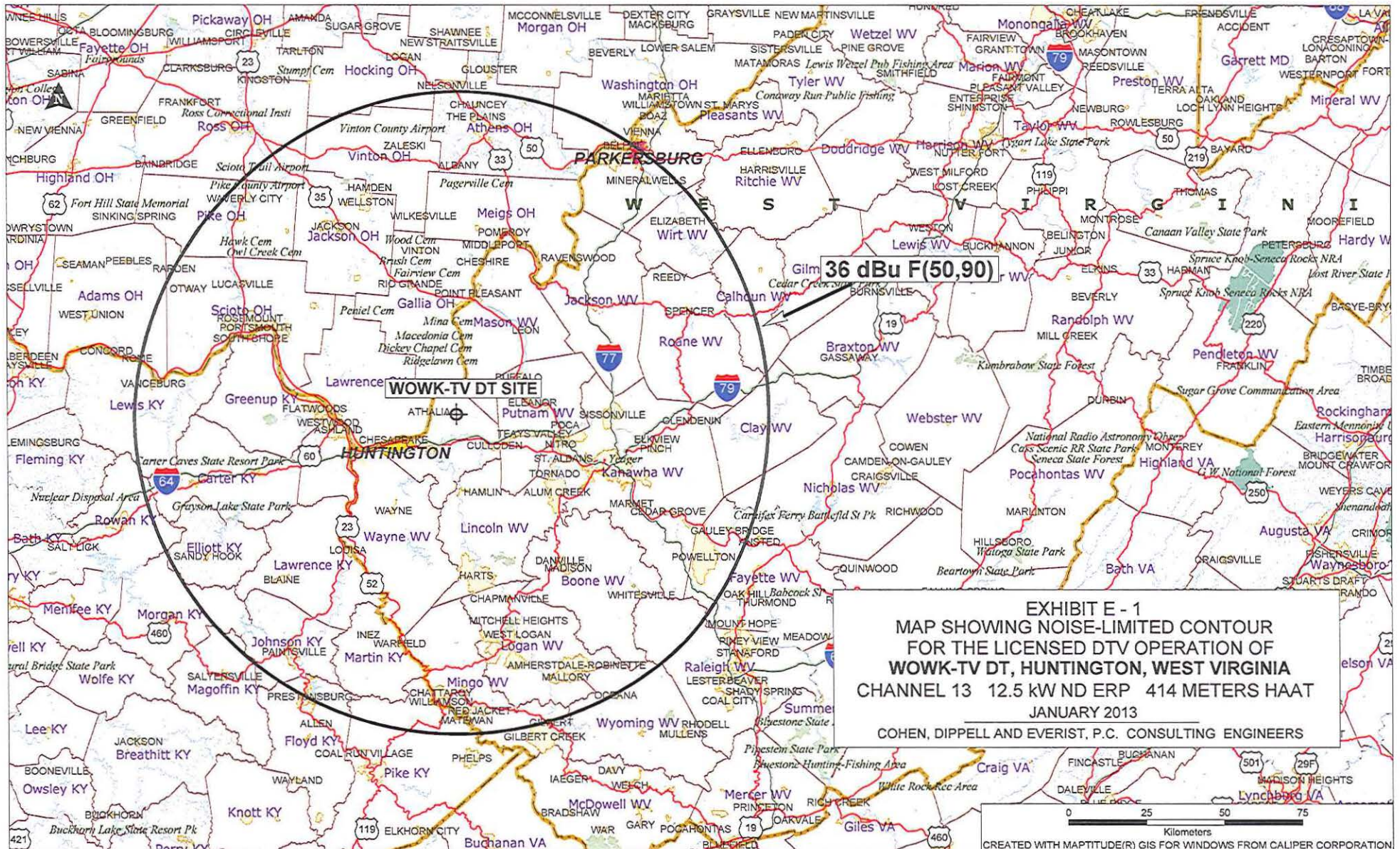
TABLE I  
COMPUTED COVERAGE DATA  
FOR THE LICENSED DTV OPERATION OF  
WOWK-TV, HUNTINGTON, WEST VIRGINIA  
CHANNEL 13 12.5 KW ERP 414 METERS HAAT  
FEBRUARY 2013

<u>Radial</u> <u>Bearing</u> N °E,T	<u>Average*</u> <u>Elevation</u> <u>3.2 to 16.1 km</u> meters	<u>Effective</u> <u>Height</u> meters	<u>Depression</u> <u>Angle</u>	<u>ERP At</u> <u>Radio</u> <u>Horizon</u> kW	<u>Distance to</u> <u>Contour F(50,90)</u> 36 dBu <u>Noise-Limited</u> km
0	207.4	431.9	0.576	12.5	103.7
45	222.2	417.1	0.566	12.5	102.6
90	264.3	375.0	0.536	12.5	99.7
135	215.0	424.3	0.571	12.5	103.1
180	220.7	418.6	0.567	12.5	102.7
225	216.2	423.1	0.570	12.5	103.0
270	217.3	422.0	0.569	12.5	102.9
315	241.8	397.5	0.552	12.5	101.2
Average	225.6				

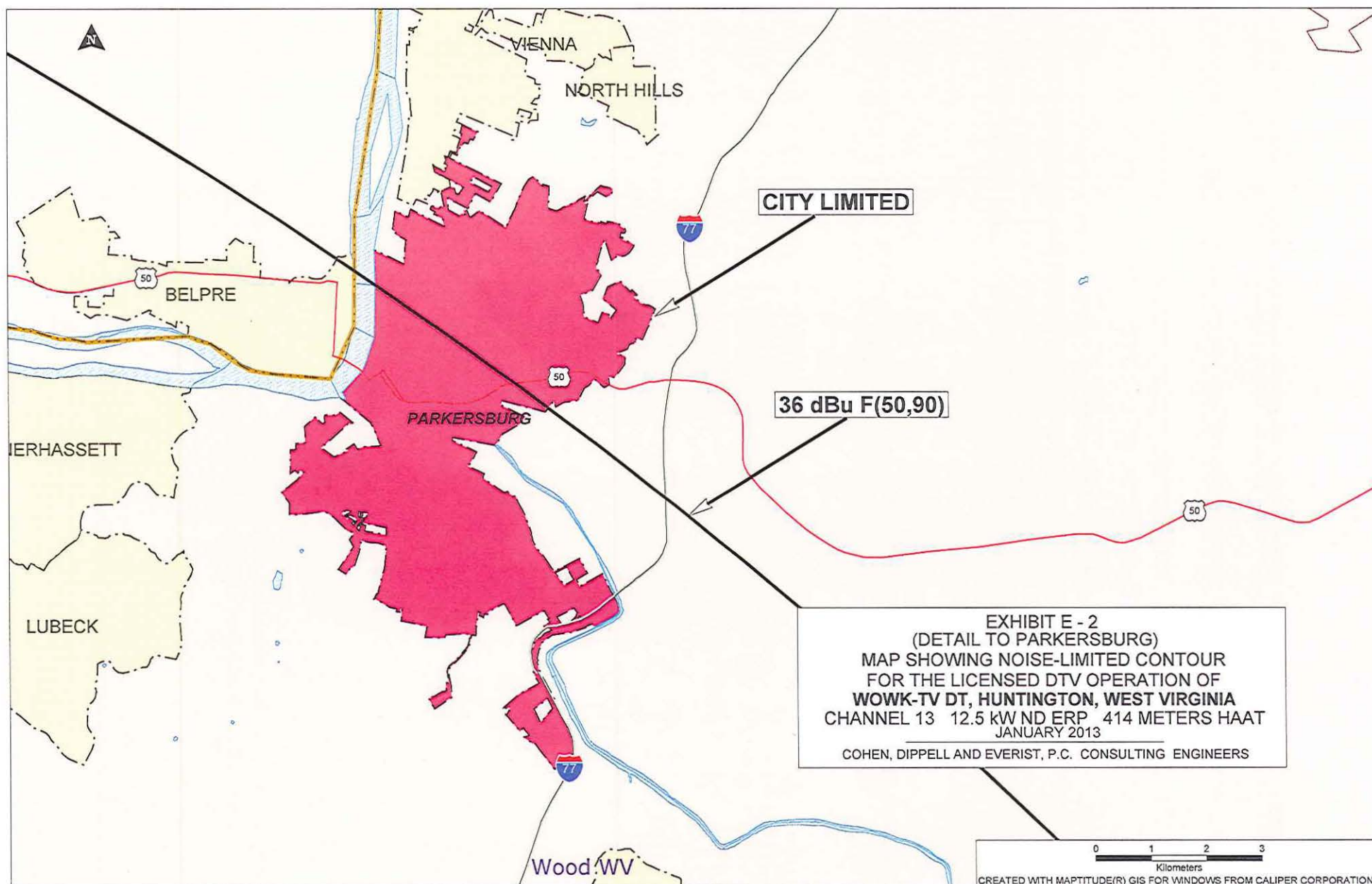
\*Based on data from FCC 3-second data base

DTV Channel 13 (210-216 MHz)  
Average Elevation 3.2 to 16.1 km 225.6 Meters AMSL  
Center of Radiation 639.3 Meters AMSL  
Antenna Height Above Average Terrain 414 Meters  
Effective Radiated Power 12.5 kW (10.97 dBk) Max.

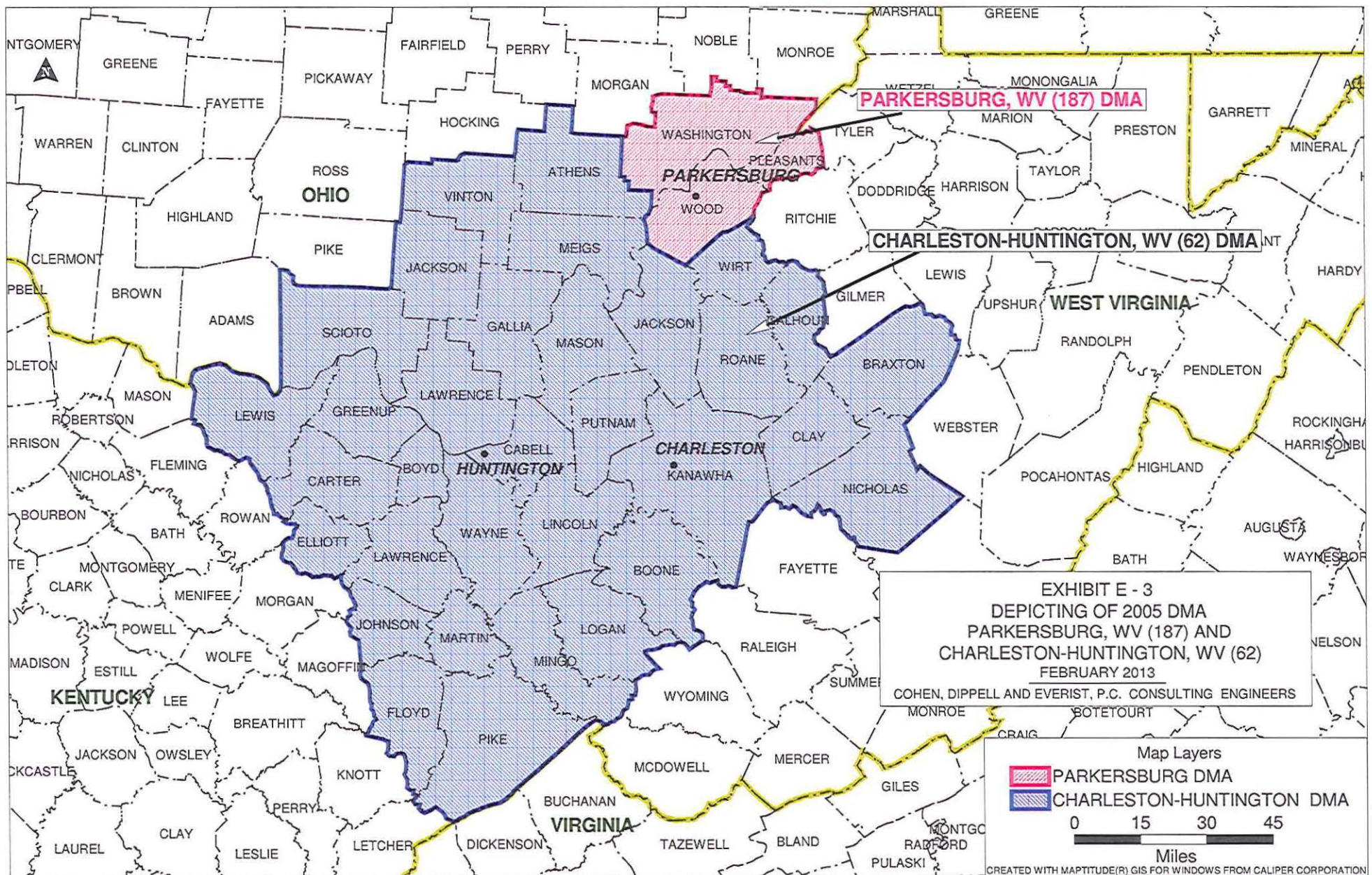
North Latitude: 38° 30' 20"  
West Longitude: 82° 12' 32"  
(NAD-27)













## CERTIFICATE OF SERVICE

I, Monica C. King, do hereby certify that a copy of the foregoing "Opposition" was served by first class U.S. mail, postage prepaid, on February 11, 2013, upon the following:

William T. Lake, Chief\*  
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Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
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GRAY TELEVISION LICENSEE,  
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Zito Media  
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Arthur Cooper, General Manager  
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Sheila Bills, General Manager  
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Armstrong Cable Services  
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Harrisville, WV 26362

Paul Richards, General Manager  
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Baltimore, MD 21211

WVAH Licensee, LLC  
c/o WVAH-TV  
1301 Piedmont Road  
Charleston, WV 25301

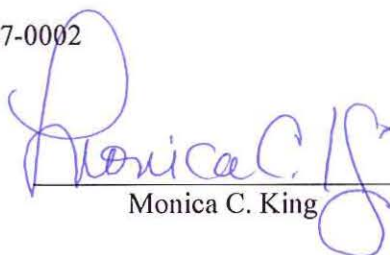
ION Media Charleston  
License, Inc.  
601 Clearwater Park Road  
West Palm Beach, FL 33401-6233

ION Media Charleston  
License, Inc.  
c/o WLPX-TV  
600-C Prestige Drive  
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